IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

THURSDAY, THE 26TH JULY 2007 / 4TH SRAVANA 1929

Crl.MC.No. 4708 of 2003()

AGAINST THE ORDER IN
CC.1056/2002 of JUDL.MAGISTRATE OF FIRST CLASS, MAVELIKKARA

.....

PETITIONERS: ACCUSED:
----

1. **RAJESH KUMAR, S/O.KUNJU PILLAI, AGED 38 YEARS, KALLITTATHIL HOUSE, ERUMAKUZHI MURI, PALAMEL, NOORANADU.**

2. **THANKAMANI AMMA, W/O.KUNJU PILLAI, AGED 69 YEARS, -DO- -DO- -DO-**

3. **SURESH, S/O.KUNJU PILLAI, AGED 40 YEARS, -DO- -DO- -DO-**

4. **KARUNAKARAN, S/O.SANKARAN, -DO- -DO- -DO-**

BY ADV. SRI.A.SHAFEEK

RESPONDENTS: COMPLAINANT/STATE
----

1. **GIRI, S/O.GANGADHARAN, AGED 28 YEARS, GIRI BHAVANIL, ERUMAKUZHI MURI, PALAMEL VILLAGE, NOORANADU.**

2. **STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA.**

BY ADV. SRI.GEORGE VARGHESE(PERUMPALLIKUTTIYIL)
PUBLIC PROSECUTOR SRI.P.RAVINDRA BABU

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 26/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.A.9999/2003 IN CRL.M.C.4708/2003

DISMISSED.

26.7.2007 **J.B.KOSHY, JUDGE**

J.B.KOSHY, J.

Crl.M.C.No.4708 OF 2003 (C)

Dated 26th July, 2007

O R D E R

The 1st respondent in this case filed a private complaint alleging that the petitioner committed offences punishable under Sections 323, 294(b), 447, 427 read with Section 34 of the Indian Penal Code. Magistrate referred the matter to the police for enquiry. A final report was submitted on 30.12.2001 stating that allegations are false. Annexure A1 is the report. On getting the final report, before referring the case notice was issued. The complainant did not appear. The Magistrate accepted the final report and case was referred. Again a protest complaint was filed which is marked as Annexure II. Magistrate took a sworn statement of the 1st respondent on 21.10.2002. The Magistrate ordered as follows:

> "Complainant absent, applied. Taken on file as C.C.No.1056/02 under Section 323, 294 (b), 447, 427 and 34 of I.P.C. Issue summons to all accused."

It is true that a second complaint on the same facts can be filed as there is no statutory bar as held by the Supreme Court in ***Mahesh Chand v. B.Janardhan Reddy and another ((2003) 1 S.C.C. 734).*** But it was held that the second complaint on the same facts could be entertained only in exceptional circumstances, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings. In the above case, the Supreme Court remanded the matter. I am of the view that as held by the Apex court, though there is no statutory bar in filing the second complaint after referring the first complaint accepting the police report, it can be done only on exceptional circumstances for valid reasons. In this case, complaint was referred earlier not merely because complainant was absent. Annexure A1 report shows that the parties were having civil disputes. Cases were filed by both sides against each other. The cases filed against the respondents were dropped. I am of

the opinion that matters of civil nature cannot be converted to criminal prosecution unless ingredients of the offences alleged are mentioned in the complaint. In any event, cogent reasons should be stated by the criminal court when cognizance is taken in a second complaint in the same set of facts. In the above circumstances, cognizance taken by the Magistrate is set aside and I direct him to issue fresh notice and decide afresh whether cognizance need be taken in the second complaint. Only for cogent reasons cognizance can be taken on the second complaint for the same offence. Hence C.C.No.1056/1999 of the Judicial First Class Magistrate, Mavelikkara is quashed and this petition is allowed to the above extent.

J.B.KOSHY
JUDGE

prp